

AMENDED IN ASSEMBLY JULY 16, 2003

AMENDED IN ASSEMBLY JULY 1, 2003

AMENDED IN SENATE MAY 15, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 122

Introduced by Senator Escutia

February 4, 2003

An act to add Sections 17204.6, 17204.7, 17204.8, and 17204.9 to the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Escutia. Private enforcement actions.

Existing law provides remedies for unfair competition that may be enforced by a governmental agency, including the district attorney, or by a private party acting for the interests of itself, its members, or the general public.

This bill would require, subject to specified exceptions, the court to review and approve attorney's fees in an unfair competition action brought or proposed to be brought by a private party on behalf of the general public. The bill would also require that the plaintiff in those actions submit a copy of the complaint to the ~~Judicial Council~~ *State Bar* of California. The bill would specify certain equitable remedies applicable to all unfair competition actions and would set forth principles for joining these actions. The bill would make its provisions

contingent upon AB 95 being enacted and becoming effective on or before January 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17204.6 is added to the Business and
2 Professions Code, to read:

3 17204.6. (a) (1) A court shall review *and approve* any
4 attorney's fees proposed to be paid in connection with a private
5 action or a private cause of action brought, or proposed to be
6 brought, under this chapter on behalf of the general public. The
7 request to review and approve the fees shall be made upon noticed
8 motion. The court shall approve an award of attorney's fees for a
9 plaintiff who prevails in the action against one or more defendants
10 if an award of attorney's fees is authorized by a statute or if the
11 award satisfies the requirements of Section 1021.5 of the Code of
12 Civil Procedure.

13 (2) (A) When any attorney's fees are proposed to be paid in
14 compromise or settlement of a private action or a private cause of
15 action proposed to be brought under this chapter on behalf of the
16 general public that has not been filed with the court, the potential
17 plaintiff shall file and serve on all parties the following:

18 (i) A complaint titled "Complaint re: Settlement of an Action
19 under Section 17200 of the Business and Professions Code"
20 describing the cause of action proposed to be brought under this
21 chapter.

22 (ii) A special motion for review and approval of the proposed
23 fees.

24 (B) A potential defendant who is a party to the compromise or
25 settlement is not required to file an answer to the complaint but
26 may file a response to the special motion upon payment of a
27 *motion* filing fee pursuant to *subdivision (a)* of Section 26830 of
28 the Government Code.

29 (C) Upon hearing the motion, the court shall approve an award
30 of attorney's fees to the potential plaintiff against one or more of
31 the potential defendants if an award of attorney's fees is authorized
32 by a statute or if the award satisfies the requirements of Section
33 1021.5 of the Code of Civil Procedure.



(3) No attorney's fees may be paid by a defendant or a potential defendant in compromise or settlement of an action or proposed action brought on behalf of the public under this chapter unless the fees have been reviewed and approved pursuant to a motion under paragraph (1) or (2). If not approved by the court, an agreement to pay any attorney's fees is void and unenforceable.

~~(4) The plaintiff or the potential plaintiff is not required to submit~~

(4) The court shall review in camera any information submitted by the plaintiff or the potential plaintiff to support the award of attorney's fees pursuant to this section if the information is protected by the attorney-client or attorney work product privilege.

(5) An attorney who receives attorney's fees in an action or proposed action under this chapter without submitting the proposed attorney's fees for review and approval by the court pursuant to paragraph (1) or (2) is subject to disciplinary action by the State Bar of California.

(b) At the time of filing a private cause of action under this chapter on behalf of the general public, the plaintiff shall notify and submit a copy of the complaint to the ~~Judicial Council~~ *State Bar of California. Any attorney who fails to comply with this subdivision is subject to disciplinary action by the State Bar of California.*

(c) Subdivision (a) shall not require a court to review *and approve* an award of attorney's fees ~~if~~ *when* the fees are agreed upon by the parties as part of the compromise or settlement of an action or proposed action brought by a labor organization or by a representative of a labor organization or by a joint labor management committee established pursuant to the federal Labor Management Corporation Act of 1978 (29 U.S.C. Sec. 175a) or by an established employment or civil rights organization on behalf of employees or the general public. For purposes of this section, an employment or civil rights organization shall be in existence for a minimum of five years in order to qualify for an exemption and have as one of its purposes the vindication of labor, civil, constitutional or human rights.

SEC. 2. Section 17204.7 is added to the Business and Professions Code, to read:

1 17204.7. (a) In addition to the relief authorized by Section
2 17203, if the court finds that a defendant has engaged in an
3 unlawful, unfair, or fraudulent business act or practice in violation
4 of this chapter and that the defendant has derived profits or ill
5 gotten gains from that act or practice, the court may order any
6 appropriate equitable relief to remedy the act or practice. A court
7 shall assure that any monetary relief in excess of the restitution
8 paid by a defendant shall be distributed as a fluid recovery or cy
9 pres award pursuant to this section.

10 (b) Prior to the entry of any judgment or order for relief
11 pursuant to this section, the court shall determine the total amount
12 of monetary relief payable as the result of the defendant's
13 unlawful, unfair, or fraudulent business act or practice. The court
14 shall set a date when the parties shall report to the court the total
15 amount actually paid in restitution to members of the public. After
16 the report is received, the court shall amend the judgment to direct
17 the defendant to pay the sum of the unpaid residue to nonprofit
18 organizations or foundations to support projects consistent with
19 the objectives and purposes of the underlying action or to promote
20 justice for all. The court shall ensure that this distribution ~~provide~~
21 *provides* substantial benefit to California consumers.

22 SEC. 3. Section 17204.8 is added to the Business and
23 Professions Code, to read:

24 17204.8. (a) All persons may be joined in one action as
25 defendants if there is asserted against them:

26 (1) Any right to relief jointly, severally, or in the alternative, in
27 respect of or arising out of the same transaction, occurrence, or
28 series of transactions or occurrences and if any question of law or
29 fact common to all these persons will arise in the action; or

30 (2) A claim, right, or interest adverse to them in the property or
31 controversy which is the subject of the action.

32 (b) It is not necessary that each defendant be interested as to
33 every cause of action or as to all relief prayed for. Judgment may
34 be given against one or more defendants according to their
35 respective liabilities.

36 (c) Where the plaintiff is in doubt as to the person from whom
37 he or she is entitled to redress, he or she may join two or more
38 defendants, with the intent that the question as to which, if any, of
39 the defendants is liable, and to what extent, may be determined
40 between the parties.

1 (d) The fact that individual defendants who are not associates
2 or affiliates of each other are engaged in the same or similar types
3 of businesses and are alleged to have violated the same or similar
4 laws or regulations shall not, in itself, constitute a basis for joinder
5 under this chapter.

6 SEC. 4. Section 17204.9 is added to the Business and
7 Professions Code, to read:

8 17204.9. A court in reviewing an action brought pursuant to
9 this chapter may, in the interests of justice, order consolidation or
10 coordination of actions.

11 SEC. 5. The provisions of subdivision (d) of Section 17204.8
12 of the Business and Professions Code added by this act do not
13 constitute a change in, but are declaratory of, existing law.

14 SEC. 6. This act shall become operative only if Assembly Bill
15 95 of the 2003–04 Regular Session is enacted and becomes
16 effective on or before January 1, 2004.

